THE WEEK IN TORTS

A Weekly Summary Of The Latest Case Decisions Critical To Those Helping Victims of Negligence

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Clark Fountain welcomes referrals of personal injury, products liability, medical malpractice and other cases that require extensive time and resources. We handle cases throughout the state and across the country. Since 1997, Florida Bar Board Certified Appellate Attorney, Julie H. Littky-Rubin has prepared and disseminated The Week In Torts to fellow practitioners. Ms. Littky-Rubin handles trial support and appeals for attorneys throughout the state.

FLORIDA LAW WEEKLY

VOLUME 39, NUMBER 44

CASES FROM THE WEEK OF OCTOBER 31, 2014

COURT FINDS THE ARBITRATION AGREEMENT REQUIRED IN A DOCTOR'S PATIENT PAPERWORK VIOLATES THE PUBLIC POLICY AS SET FORTH IN THE MEDICAL MALPRACTICE ACT--COURT CERTIFIES CONFLICT.

Crespo v. Hernandez, M.D., et al., 39 Fla. Law Weekly D2223 (Fla. 5th DCA October 24, 2014):

The Fifth District found that one of those mandatory arbitration agreements now being included in so many doctors' "patient paperwork" violated the public policy as pronounced by the legislature in the Medical Malpractice Act (chapter 766), because it failed to adopt the necessary statutory provisions. In enacting chapter 766, the legislature explicitly found that the Medical Malpractice Act was necessary to lower the cost of medical care in Florida. Therefore, any contract that seeks to enjoy the benefits of the arbitration provisions under the statutory scheme must necessarily adopt all of the chapter's provisions.

After striking down the arbitration clause, the Fifth District certified conflict with the Second District's decision in Santiago v. Baker, 135 So.3d 569 (Fla. 2nd DCA 2014), which held otherwise.

ATTORNEY-CLIENT PRIVILGED DOCUMENTS FROM THE INSURER ATTORNEY'S LITIGATION FILE IN THE UNDERLYING COVERAGE CASE ARE NOT DISCOVERABLE IN A BAD FAITH CASE.

Geico General Insurance Co. v. Moultrop, 39 Fla. Law Weekly D2215 (Fla. 4th DCA October 22, 2014):

Availability of the attorney-client privilege does not depend on whether a case is a bad faith case or whether the information related to legal advice is about bad faith. When an insured party brings a bad faith claim against its insurer, the insured may not discover such privileged communications which occurred between the insurer and its counsel during the underlying action.

Absent an exception, such as when the insurer places counsel's advice at issue, the attorney-client privilege information from the underlying suit is not discoverable in the bad faith suit.

ORDER GRANTING MOTION TO DISMISS WAS NOT APPEALABLE WHERE THE TRIAL COURT ORDER DID NOT STATE THAT THE DISMISSAL WAS WITH PREJUDICE, AND DID NOT OTHERWISE SUGGEST THAT APPELLANTS WERE PRECLUDED FROM SEEKING RELIEF UNDER AN ALTERNATIVE THEORY.

Furstace v. Migdall, 39 Fla. Law Weekly D2225 (Fla. 5th DCA October 24, 2014).

Kind Regards

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